Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Rulemaking of NextNav Inc.	)	WT Docket No. 24-240 RM-11989
	)	

OPPOSITION OF ITRON, INC. TO PETITION FOR RULEMAKING

Henry Goldberg
Joseph A. Godles
Jonathan L. Wiener
Goldberg, Godles, Wiener & Wright LLP
1025 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036
(202) 429-4900
Its Attorneys

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Itron, Inc. ("Itron"), by its attorneys, hereby opposes the Petition for Rulemaking filed by NextNav Inc. ("NextNav")[1] in the above-captioned proceeding.[2]

I. INTRODUCTION AND SUMMARY

As reflected in the Commission's comprehensive Public Notice in this proceeding, the fundamental question posed by any proposal to reconfigure and repurpose established spectrum allocations is whether the benefits of adopting such a proposal outweigh the costs of disrupting existing uses and services. As shown in detail below, the answer here is a resounding no.

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[1] As used herein, references to "NextNav" also encompass its affiliates, including Progeny LMS, LLC ("Progeny").

[2] NextNav Petition for Rulemaking, Enabling Next-Generation Terrestrial Positioning, Navigation, and Timing and 5G: A Plan for the Lower 900 MHz Band (902-928 MHz) (filed Apr. 16, 2024) (the "Petition"); Letter from Robert Lantz, General Counsel, NextNav Inc., to Marlene H. Dortch, Secretary, FCC (filed June 7, 2024) (the "Supplement"); *Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment on NextNav Petition For Rulemaking WT Docket No. 24-240 and RM-11989*, Public Notice, DA 24-776 (WTB rel Aug. 6, 2024) ("Public Notice").

In its Petition, NextNav asks the Commission to reconfigure and repurpose the 902-928 MHz band. If NextNav's proposals were adopted, NextNav would become the sole nationwide licensee of 15 MHz-- over half the band.

NextNav states that it requires only a "small amount of capacity"[3] on the order of "roughly 2% to 5% of the network's total capacity,"[4] for its long-promised but not delivered positioning, navigation, and timing ("PNT") services. Mobile wireless carriers that NextNav would "partner" with would use the remaining 95-98% of the network's capacity for 5G services. [5]

NextNav's CEO has stated that NextNav is "not going to build the network."[6] The mobile wireless carriers would do that.[7]

Despite the carriers' central role, NextNav has no mobile wireless carrier partners and no idea what the terms of any "partnership" with NextNav would be. NextNav's CEO states candidly that they "haven't figured [it] out."[8]

NextNav has acknowledged its plan for the 902-928 MHz precipitates from a failed business model that, in the words of one analyst, constitutes "a busted SPAC."[9]

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[3] Petition, Executive Summary at iii.

[4] Elisabeth Jeffs, "NextNav Lays Out New Vision for Complement and Backup to GPS with Additional Spectrum for Broadband Services" (Apr. 16, 2024) ("NextNav Interview"), https://nextnav.com/lays-out-new-vision/.

[5] Petition, Executive Summary at i.

[6] Mike Dano, *Nextnav's CEO Explains Her 5G Network Buildout Plan*, Light Reading (May 3, 2024) https://www.lightreading.com/5g/nextnav-s-ceo-explains-her-5g-network-buildout-plan.

[7] Petition, Executive Summary at i.
[8] NextNav Interview.

[9] Soumya Eswaran, *Is NextnavNextNav (NN) a Worthy Investment?*, Yahoo!Finance (May 3, 2024) https://finance.yahoo.com/news/nextnav-nn-worthy-investment-065907262.html.

NextNav's CEO concedes that "[a] standalone PNT network absolutely makes no economic sense."[10]

Now NextNav seeks a 15 MHz bailout for its unsustainable business plan. For this speculative, if not disingenuous, plan, NextNav's proposed restructuring of the 902-928 MHz band would oust hundreds of millions of unlicensed users from spectrum that not only is vital to their use but provides substantial benefits to the public and the U.S. economy.[11] The Commission should not reward NextNav's decades' long warehousing of spectrum with more spectrum rights while consigning hundreds of millions of unlicensed users to the scrapheap.

Itron demonstrates in this Opposition that:

(i) Hundreds of millions of unlicensed devices in the 902-928 MHz band support countless applications, including critical infrastructure such as energy production and delivery; industrial, commercial and home security systems; and water, gas and electric utility systems. Billions of dollars have been invested in these devices and operations.

(ii) NextNav's proposals to repurpose this band with scant regard for the consequences conflict with Commission precedent and policy.

(iii) NextNav makes no showing to address the potential for it and its wireless carrier "partners"[12] to disrupt unlicensed operations in the band. Although NextNav asserts that "[c]oexistence between the NextGen system and unlicensed Part 15 operations should be achievable,"[13] its proposals to eliminate interference protections for Part 15 devices suggest otherwise.

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[10] NextNav Interview.

[11] Consumer Technology Association ("CTA") estimates the value of wholesale sales attributable to unlicensed devices is over $79.8 billion per year. *See Unlicensed Spectrum and the U.S. Economy: Quantifying the Market Size and Diversity of Unlicensed Devices*, Consumer Technology Association, Technology & Standards Department, p.13 (January 2022) ("CTA Study").

[12] *See* Petition at 22.

[13] *Id*. at 31.

For twenty five years, NextNav has sat on valuable spectrum, received multiple waivers, and sought and been granted extension upon extension of construction deadlines.[14] NextNav has changed its business plans as it goes,[15] but to no avail. It promised more than thirteen years ago to build out a highly accurate position location capable service to support emergency 911 service.[16] Now, ignoring the emptiness of its past commitments, NextNav says: just give us 15 MHz of spectrum we can sell to wireless carriers for 5G services and we will finally deliver what we have promised. The Commission should view this proposed "bargain" with suspicion not just because of past history, but also in light of NextNav's proposal that the Commission eliminate its buildout requirements.[17]

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[14] Progeny LMS, LLC is the NextNav entity that holds the licenses. Progeny acquired the licenses in FCC Auction No. 21. *See Location and Monitoring Service Auction Closes, Winning Bidders in the Auction of 528 Multilateration Licenses in the Location and Monitoring Service*, Public Notice, 14 FCC Rcd 3754 (1999). *See also In the Matter of Progeny LMS, LLC Request for Waiver and Extension of Time and Further Request for Waiver and Extension of Time*, Order, 38 FCC Rcd 2342 (WTB 2023) (extensive history of the extensions and other relief that has been granted)("2023 Waiver and Extension Order").

[15] Progeny LMS, LLC, Request for a Three-Year Extension of the Five–Year Construction Requirement for its Multilateration Location and Monitoring Services Economic Area Licenses, ULS File Nos. 0002049041-0002049297, (filed Feb. 15, 2005). *See also Request of Progeny LMS, LLC for a Three-Year Extension of the Five–Year Construction Requirement for its Multilateration Location and Monitoring Services Economic Area Licenses*, Memorandum Opinion and Order, 21 FCC Rcd 5928 (WTB 2006).

[16] Petition for Waiver of the Rules and Request for Expedited Treatment, Progeny LMS, LLC, WT Docket 11-49 (filed Mar. 8, 2011); Letter dated Jun. 10, 2012 from Bruce A. Olcott, Attorney for Progeny LMS, LLC and NextNav LLC to Marlene Dortch, Secretary, FCC regarding Permitted Oral Ex Parte Presentation PS Docket No. 07-114 & WT Docket No. 11-49.

[17] *See* Supplement at A-2.

II. INTEREST OF ITRON

The 902-928 MHz unlicensed band is used for utility smart grids and connects most households in the United States with a smart meter. This means that the band hosts the largest installed base of internet of things ("IOT") devices in the United States - larger than Verizon's, AT&T's or T-Mobile's installed base of IOT devices. The number of installed smart electricity meters is projected to grow at a compound annual growth rate of 3.8%, from 145.9 million in 2023 to 182.9 million in 2029.[18]

Itron is a key provider of these connections and is a proven global leader in energy, water, smart city, industrial internet of things ("IIOT"), and intelligent infrastructure services. It serves utilities, cities and the general public by building innovative systems that offer new efficiencies, connect communities, encourage conservation, and increase resourcefulness. By safeguarding invaluable natural resources, Itron improves quality of life.

Itron delivers intelligent connectivity. Its smart devices and networks work together to observe and analyze data and apply sophisticated algorithms, giving modern utilities and cities the insight necessary to efficiently manage critical energy and water infrastructure—both to extend the life of existing grid assets and to deploy new ones to integrate renewable energy sources, electric vehicles (EVs), battery storage and more. Itron's standards-based platform underpins a broad ecosystem of developers, users and applications to create high- performing solutions.

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[18] *See* https://www.businesswire.com/news/home/20240612740592/en/North-America-Smart-Metering-Industry-Report-2024-Installed-Base-of-Smart-Electricity-Meters-Set-to-Grow-at-a-Compound-Annual-Growth-Rate-of-3.8-from-145.9-Million-in-2023-to-182.9-Million-in-2029---ResearchAndMarkets.com.

With utilities and municipalities pushed to provide increased reliability, better value and personalized customer experiences, Itron has made strategic investments in networking and communications, metering and sensing, demand response, distribution automation, asset control and management, distributed energy resources (DERs, including EVs), enhanced edge intelligence and computing. Through these investments, Itron is able to extend information-based analytics and decision-making capabilities all the way to the network edge—and everywhere in between—so that utilities can deliver next-generation services on a network that thinks for itself, repairs itself, and anticipates outages and other problems before they occur. Itron is a proven leader in IIoT, reliably and securely connecting critical infrastructure that powers more than 200 million devices for more than 8,000 utility and city customers all around the world, including more than 75 million connected endpoints operating in the 902-928 MHz band in the United States.

Itron accomplishes this using mesh radio technologies in the unlicensed 902-928 MHz band operating under FCC Part 15 rules. These rules encourage friendly co-existence, a fundamental readily achieved with current radio technologies, resulting in a pragmatic, predictable and highly efficient use of spectrum for narrowband communications in the IIOT sector. Electric, gas and water utilities, as well as municipalities, rely on a stable Part 15 regulatory environment to operate critical infrastructure.

Itron, its customers – primarily utilities, and municipalities, and the general public would be directly, substantially, and irreversibly impacted adversely if the Commission were to adopt NextNav's proposals.

III. UNLICENSED DEVICES PROVIDE CRITICAL SERVICES AND REFLECT BILLIONS OF DOLLARS OF INVESTMENT

Hundreds of millions of unlicensed devices operate in the 902-928 MHz band representing billions of dollars of investment. There already were millions of devices in the band when the Commission opened it to multilateration Location and Monitoring Service ("M-LMS").[19] Unlicensed use has expanded ever since, fostered by the Commission's decision to establish rules in the band to facilitate continued co-existence. The myriad uses of unlicensed devices operating in the 902-928 MHz band include:

- Important freight railroad applications, including wireless links for signaling systems, wireless download of train event recorders, and Automatic Equipment Identification (AEI), which tracks equipment and cargo;
- Smart meters and appliances;
- Supervisory Control and Data Acquisition ("SCADA") systems that monitor and control the safety and integrity of oil and natural gas pipelines and production fields;
- Water and gas utility measurement devices;
- Radio Frequency Identification Devices ("RFIDs") that automatically track assets and supply chains;

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[19] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring System*, Report and Order, 10 FCC Rcd 4695 ¶ 32 (1995) ("LMS Report and Order").

- Fixed broadband service in rural areas that the 902-928 MHz band is uniquely suited to provide due to superior propagation characteristics that enable signals to penetrate trees and terrain obstructions;
- Medical devices such as wireless glucose meters and insulin pumps;
- Auditory assistance devices, used to help those with hearing difficulties in public gathering places such as churches and theatres;
- Baby monitors;
- Field disturbance sensors, used among other places in department stores to prevent thefts;
- Home security systems;
- Remote keyless entry and tire pressure monitor systems;
- Perimeter security systems;
- Wireless microphones; and
- Countless other important applications for utilities, oil and natural gas companies, railroads, and other critical infrastructure companies as well as public safety and health services.

Hundreds of millions of American consumers rely on unlicensed devices in this band for everyday uses, including wireless hearing aid products, emergency call pendants, home alarm systems, cordless phones and wireless headsets, and a host of other popular consumer items. The impact on the U.S. economy of harmful interference to these ubiquitous and critically-important devices would be vast, and potentially immeasurable.

Devices operating in the 902-928 MHz band are a critical part of a broader unlicensed universe. In 2022, the Consumer Technology Association (CTA)® estimated that unlicensed spectrum was generating $95.8 billion per year in retail sales value.[20] NCTA projects that "[b]y the end of 2024, there will be 21.1 billion Wi-Fi devices in use globally, ranging from smart locks and thermostats in homes to devices enabling cloud computing and rich telepresence in enterprise settings, to factory monitoring devices in industrial settings."[21]

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[20] CTA Study at p. 4.

The Commission asks in the Public Notice whether unlicensed services in the 902-928 MHz band could be accommodated in other spectrum bands; what the costs for relocation would be; and how long relocation would take.[22] It is inconceivable in an era of spectrum scarcity that alternate low band spectrum could be found to accommodate hundreds of millions of established users. NextNav has not even attempted to propose alternative spectrum. Even if alternate spectrum could be found, moreover, relocation would require replacing hundreds of millions of devices, and the cost would be enormous.

Attempting relocation would be especially problematic for Itron's customers. Utilities, regardless of ownership structure, are generally operated to benefit the public interest and regulated by state level "Public Utilities Commissions" (PUCs) to ensure fair consumer access and pricing. PUCs hear utility investment petitions to evaluate infrastructure spending that can be passed on to rate payers (*i.e.*, consumers). These "rate cases" are generally built on 10–25-year asset lifetimes. Even if alternate spectrum were available, countless rate cases granted by the more than 50 PUCs in the United States would have to be reconsidered … adding even more to the costs passed on to the ratepayers! This re-evaluation would also burden the grid modernization investment necessary to accommodate renewable energy resources and broad electrification mandates. In sum, NextNav's proposals would undercut utility efforts to serve the public.

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[21] Letter dated July 12, 2024 from Traci Biswese, Vice President & Associate General Counsel, NCTA – The Internet & Television Association to Ms. Marlene Dortch, Secretary, FCC regarding *ex parte* communication in Unlicensed Use of the 6 GHz Band (ET Docket No. 18-295), Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz (GN Docket No. 17-183), Promoting Investment in the 3550-3700 MHz Band (GN Docket No. 17-258), and Competition in the Communications Marketplace (GN Docket No. 24-119) at 2, *citing The State of Connectivity: Wi-Fi® momentum in 2024*, Wi-Fi Alliance: The Beacon (May 30, 2024), https://www.wi-fi.org/beacon/the-beacon/the-state-of-connectivity-wi-fi-momentum-in-2024.

[22] Public Notice at 4.

Against this backdrop, as discussed further below, NextNav's suggestion that the Commission eliminate rules designed to preserve and foster unlicensed use in the 902-928 MHz band and disregard the enormous investment and public interest in unlicensed use of the band must be rejected.

IV. NEXTNAV'S PROPOSAL WOULD UPEND THE COMMISSION'S CAREFULLY CRAFTED REGIME FOR COEXISTENCE BETWEEN M-LMS OPERATIONS AND UNLICENSED PART 15 OPERATIONS

When the Commission adopted its rules permitting M-LMS into the 902-928 MHz band, rules under which NextNav acquired its spectrum, the Commission was keenly aware of the importance of Part 15 devices operating in the band.[23] The Commission recognized "the enormous benefits to both businesses and consumers that will result from the continued growth in the use of the Part 15 industry."[24] Accordingly, it endeavored "to maintain the coexistence of the many varied users of the band," including Part 15 devices, by "strik[ing] an equitable balance between the needs of M-

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[23] AVM Report and Order, 10 FCC Rcd at ¶ 8.

[24] *Id.*

LMS service providers and those of the Part 15 users and manufacturers.[25] The rules it adopted were designed to give "Part 15 manufacturers and users require[d] regulatory certainty" in further developing use of the band.[26]

The Commission went about achieving these objectives in several important ways. First, it imposed technical operating restrictions designed to lessen the risk of interference to Part 15 devices, including limitations on power[27] and restrictions on the placement of links within authorized spectrum.[28] Second, it adopted rules specifying the kinds of transmissions that could be made by M-LMS service providers, ensuring that such systems are "utilized primarily for location service and not as a general messaging or interconnected voice or data service" which would pose a much greater risk of interference to Part 15 devices.[29] Third, it conditioned Economic Area M-LMS licenses "on the licensee's ability to demonstrate through actual field tests that their systems do not cause unacceptable levels of interference to Part 15 devices."[30] And fourth, it established a safe harbor for " unlicensed users of Part 15 devices [within which they] may operate without risk of being considered sources of harmful interference to services with a higher allocation status."[31]

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[25] *Id.* at ¶ 23.

[26] *Id.* at ¶ 16. See also ¶ 2 ("Our decisions herein also provide certainty for all users of the band so they can invest in the equipment and facilities necessary to bring quality, low cost services to consumers.")

[27] *Id.* at ¶ 77.

[28] *Id*. at. ¶ 74.

[29] *Id*. at. ¶ 23.

[30] *Id*. at ¶ 82, embodied at 47 C.F.R. § 90.353(d).

NextNav's proposals would cast aside this carefully crafted regime. They would radically alter power limits and restrictions on the placement of links within the band. They would eliminate specifications for the kinds of transmissions that can be made by M-LMS service providers. They would remove the requirements for field strength testing, dismissed by NextNav as "special treatment for unlicensed operations,"[32] that assure interference remains within tolerable limits.

NextNav's proposals also would eliminate the safe harbor for Part 15 unlicensed devices.[33] NextNav asserts that M-LMS licensees are entitled to unqualified protection from unlicensed devices in the band by misleadingly quoting only *the first sentence* of Section 90.361, which reads: "Operations authorized under parts 15 and 97 of this chapter may not cause harmful interference to LMS systems in the 902-928 MHz band."[34] NextNav neglects to mention the rest of the Section, which establishes a safe harbor by providing that: "[t]hese operations *will not be considered to be causing harmful*

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[31] Id. at ¶ 36, embodied at 47 C.F.R. § 90.361. The Commission reiterated the importance of these restrictions when it granted NextNav time to build out its network. It noted that it had "adopted specific interference rules designed to maintain coexistence of many varied users in the band, including Part 15 users." *See Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules*, Order, 26 FCC Rcd 16878, ¶ 25 (OET, WTB 2011) ("2011 Waiver Order"). The Commission then emphasized: "This order does not waive any of those rules." *Id.*

[32] Supplement at A-1

[33] Supplement at A-6.

[34] *See* Petition at 18, n.65.

interference to a multilateration LMS system operating in one of the three EA sub-bands" if they meet the conditions stated in the rule.[35]

Eliminating this safe harbor, in combination with NextNav's other proposals for casting aside the current regulatory regime, would obliterate the Commission's interference protections.

V. NEXTNAV'S FAILURE TO ADDRESS THE POTENTIAL FOR IT AND ITS WIRELESS CARRIER "PARTNERS" TO DISRUPT UNLICENSED OPERATIONS IN THE BAND RENDERS ITS PETITION DEFECTIVE

NextNav asserts that "[c]oexistence between the NextGen system and unlicensed Part 15 operations should be achievable,"[36] but it makes no showing to support that assertion. Instead NextNav merely holds out the possibility that it will develop "technical analyses intended to address representative Lower 900 MHz Part 15 uses."[37] The Commission cannot evaluate interference based on a nonspecific promise of future analysis.

If NextNav truly were to believe its proposed operations could coexist with Part 15 devices in the 902-928 MHz band despite its proposed rule changes, moreover, it should have had no problem maintaining the safeguards the Commission developed for the band. That it proposes to eliminate these safeguards speaks volumes.

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[35] 47 C.F.R. § 90.361 (emphasis added).

[36] Petition at 31.

[37] Petition at 31.

In any event, the burden is on NextNav, as the proponent of rule changes, to demonstrate that those changes would not disrupt Part 15 operations in the band. Absent this demonstration, NextNav's Petition is defective and must be dismissed.

VI. NEXTNAV HAS WAREHOUSED SPECTRUM FOR TWENTY-FIVE YEARS

NextNav's initial licenses to build out and operate M-LMS systems go back to 1999. Although some of these licenses have been built in accordance with their license conditions, many have not.[38] Similarly, over half of the licenses that it hopes to acquire from Skybridge and Telesaurus are unbuilt.[39]

Since 2005, NextNav has sought and received multiple extensions of time and other relief to meet benchmarks for providing substantial service with scant results.[40] Against this history, the promises NextNav makes in its Petition to deliver an enhanced PNT service sound all too familiar. For example, in granting NextNav waivers in 2011, the Commission relied upon NextNav's claim, similar to the claims made in its Petition, that granting the requested waivers would allow NextNav to "'provide highly accurate and reliable position location information particularly in challenging environments such as indoors and in urban centers.'"[41] The Commission further relied on NextNav's claims, which NextNav continues to make now, that "'a waiver of this rule would serve the public interest because GPS is less accurate indoors and around tall buildings than for outdoor or rural use.'"[42]

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[38] *See* Request of Progeny LMS, LLC For Waiver and Extension of Time, WT Docket 12-202 (filed Mar. 31, 2023) ("2023 Waiver Request").

[39] Telesaurus Holdings GB, LLC and Skybridge Spectrum Foundation (Assignors) and Progeny LMS, LLC (Assignee) Application for Assignment, ULS File No. 0011022019 at Exhibit B (filed Apr. 16, 2024) ("NextNav Assignment Application"). 129 licenses were automatically terminated for failure to construct and are the subject of a pending petition for reconsideration. *See id.,* Description of Transaction pp. 2-3. *See also In re Helen Wong-Armijo, FCR, Inc., Skybridge Spectrum Foundation, & Telesaurus Holdings GB, LLC*, Report & Order, DA 17-1124, WT Docket No. 16-385 (rel. Nov. 20, 2017); and see Petition for Reconsideration of Susan L. Uecker, WT Docket No. 16-385 (filed Dec. 20, 2017).

[40] *See* 2023 Waiver and Extension Order.

As echoed in NextNav's Petition, the Commission back then noted that "Progeny states that 'M-LMS development has been stalled and that it and its partners have developed a "'multilateration technology that can provide highly accurate position location information using relatively simple and inexpensive terrestrial network architecture.'" [43] And, just as in its current Petition, NextNav previously held out the prospect of "bells and whistles" that purportedly would enhance its technology.[44] On the strength of these failed promises, the Commission time and again has waived its rules and given NextNav more time to build out its network.

NextNav has offered various and changing explanations for its failure to meet service milestones, including lack of availability of equipment[45]; developments in GPS that made its original business plans obsolete[46]; waiting on waiver relief, which was granted in 2011[47]; delays in a finding as to unacceptable interference to Part 15 devices, a finding that occurred in 2013[48]; failures of wireless carriers to comply with E911 requirements[49]; and throughout all of its requests, a continuing suggestion that the Commission is responsible for NextNav's failures.[50]

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[41] 2011 Waiver Order at ¶ 21.

[42] *Id.* at ¶ 7.

[43] *Id.*

[44] *See, e.g*, Letter of June 10, 2012, from Bruce A. Olcott, Attorney for Progeny LMS, LLC and NextNav LLC to Marlene H. Dortch, Secretary, FCC regarding notice of Permitted Oral Ex Parte Presentation in PS Docket No. 07-114 and WT Docket No. 11-49.

[45] Request of Progeny LMS, LLC for Limited Waiver of Construction Requirements, ULS File Nos. 0002049041-0002094297 at p. 1 (filed Feb. 15, 2005); and again in 2012: Progeny LMS, LLC, Request for Waiver and Extension of Time, ULS File Nos. 0005273211-0005273290, 0005273309-0005273348, 0005273354- 005273393, 0005273400-0005273459, 0005273491-0005273550, 0005273555-0005273602, 0005273607-0005273654 at pp. 8-11 (filed Jun. 21, 2012) ("2012 Waiver and Extension Request").

[46] *Id*. at 3.

NextNav claims in its Petition that others underuse the 902-928 MHz band. But, in seeking milestone relief, NextNav stated the opposite.

For example, as recently as last year, NextNav recognized that the band is heavily used by others and that its buildout delay would not lead to under-utilization:

> "the grant of an extension will not result in the stockpiling or warehousing of spectrum resources …because the 902-928 MHz band is subject to unique spectrum sharing requirements that ensure that the frequencies are not and cannot be underutilized. M-LMS licensees share the 902-928 MHz band with Federal Government radiolocation systems, ISM devices, licensed amateur radio operations, and unlicensed Part 15 equipment. The Commission has determined that 'the 902-928 MHz band is already heavily used by other licensed and unlicensed services for a wide variety of purposes. Consequently, even if an M-LMS licensee fails to build out its system, the possibility that the spectrum will go under-utilized is negligible.'"[51]

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[47] *See* 2012 Waiver and Extension Request at p. 4.

[48] Progeny LMS, LLC Amendment and Restatement to Requests for Waiver and Extension of Time, ULS File Nos. 0006383272 *et al*. at pp 8-11 (filed Mar. 27, 2015).

[49] 2023 Waiver and Extension Request at p. 2.

[50] *See* e.g. 2023 Waiver Request (The Commission subsequently changed the coverage compliance rules for the wireless carriers, but did not do so in a timely manner for Progeny, pp. 11-13; The Indoor Location Rules that formed the basis of Progeny's buildout requirements were not implemented in a timely manner, pp. 13-16; The significant delay in addressing Progeny's use of a tall building approach for buildout compliance clearly qualifies as sufficient regulatory uncertainty to justify a limited extension of its buildout requirements, pp. 21-27); 2012 Waiver and Extension Request (Regulatory Uncertainty Continues to Delay Progeny's Deployment of its M-LMS Network, pp.3-7).

[51] 2023 Waiver Request at pp. 35-36, quoting *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, at ¶ 30 (1998).

Now NextNav has changed its tune, claiming in its Petition it should be given access to additional portions of the band to avoid "spectrum sitting fallow"![52] NextNav cannot have it both ways. Obviously, parties that change their story to suit their current needs lack credibility. Abundant evidence shows that unlicensed devices use the band intensively for commercially and socially valuable purposes. The band is not fallow; only NextNav's use of it is.

VII. THE COMMISSION SHOULD NOT REWARD NEXTNAV'S FAILED BUSINESS PLAN WITH A WINDFALL

NextNav finally acknowledges that its plan for a "PNT-only network is not commercially viable."[53] It freely admits that revenues generated from customers would not cover the capital costs for a stand-alone network and bemoans the government's unwillingness to subsidize that network directly.[54]

Since no direct government subsidy is forthcoming, NextNav seeks a massive indirect government subsidy. It asks that the Commission reward its past failures and broken promises by giving it the rights to a large swath of spectrum nearly all of which it would sell to (or "partner" with) wireless broadband operators for 5G, providing NextNav with an enormous windfall. In theory, as NextNav states, it might operate a PNT service on its 2-5% share of the network's capacity. However, given that NextNav has failed repeatedly to live up to its promises, and given it is now proposing that the

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[52] Petition at 29.

[53] Petition, Executive Summary at iii.

[54] *Id*. at iii-iv.

Commission eliminate NextNav's buildout requirements,[55]the Commission should view NextNav's latest pledges with a healthy skepticism.

NextNav's financial interest in the rulemaking it seeks is clear. As described by one analyst, implementing NextNav's proposals would allow NextNav to go from "a busted SPAC tied to flying taxis" to the holder of valuable broadband spectrum likely worth more than one dollar per pop -- more than double the value of the company's shares.[56] But NextNav's private financial interest conflicts with the public interest. The Commission should not undermine the public interest to bail out companies whose financial plans have gone awry.

The market has spoken. What NextNav has proposed to build, the market will not support. Moreover, and as NextNav recognizes, there are numerous alternative systems for PNT.[57] Its claims as to the superiority of its technology over other availability alternatives are unproven.

By way of contrast, Part 15 operations in the band are serving the public interest. Hundreds of millions of devices in use and billions of dollars of investment in equipment demonstrate not just their value but their intensive and effective use of spectrum. It would turn Commission policy on its head to undermine those companies and consumers who have used the spectrum effectively to serve a company that admits, after 25 years of warehousing spectrum, it cannot make a go of it without a Commission bailout.

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[55] *See* Supplement at A-2.

[56] *See* note 6.

[57] *See* Petition at 10-12.

VIII. CONCLUSION: AT BOTTOM, THIS IS A SPECTRUM PLAY WHEREBY NEXTNAV SEEKS TO CONVERT, AUGMENT AND CASH IN ON SPECTRUM IT WAREHOUSED FOR DECADES

After twenty years of saying its buildout is just around the corner, NextNav finally concedes that the market will not support what it has been holding out to the Commission as "revolutionary."[58] So it has dramatically changed course. NextNav has abandoned its representations that the 902-928 MHz band is fully utilized; it has asked the Commission to forsake the interference protections that were NextNav's price of admission to the band; and it has asked the Commission to facilitate a spectrum grab that would provide a windfall for NextNav at the expense of the public interest. The warehousing of spectrum should not be so rewarded.

For the reasons set forth herein, NextNav's Petition should be denied.

Respectfully submitted,

/s/ Henry Goldberg
Henry Goldberg
Joseph A. Godles
Jonathan L. Wiener
Goldberg, Godles, Wiener & Wright LLP
1025 Connecticut Avenue, NW, Suite 1000
Washington, DC 20036
(202) 429-4900
Its Attorneys

September 5, 2024

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[58] *Id*. at 11.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of September, 2024, a copy of the foregoing Opposition of Itron, Inc. to Petition for Rulemaking was sent via electronic mail, to the following:

Robert Lantz, General Counsel
John Kim, VP of Technology Development
NEXTNAV INC.
1775 Tysons Blvd.
5th Floor
McLean, VA 22102
rlantz@nextnav.com
jkim@nextnav.com

/s/*Michael Lehmkuhl*
Michael Lehmkuhl